

1 Jan Schieberl
2 c/o 2240 Millstream Lane
3 San Ramon, CA 94582
4 925-906-9414

5 Plaintiff Jan Schieberl

FILED
2008 JUL -9 PM 2:59
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7
8 THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 E-filing

12 ADR

13 JAN SCHIEBERL

14 Plaintiff,

15 vs.

16 AVELO MORTGAGE, LLC,

17 CITIMORTGAGE

18 NORTHWEST TRUSTEE SERVICES

19 Defendants,

20 C08-03321
21 CASE NO.

22 BZ

23 **DECLARATION OF JAN SCHIEBERL;
24 PROPOSED ORDER.**

25 Pending Hearing

26 Date:

27 Time:

28 Ctrm:

29 **DECLARATION OF JAN SCHIEBERL**

30 I, JAN SCHIEBERL, declare:

31 1. I am plaintiff in the within matter. The facts set forth herein are within my personal
32 knowledge and, if called upon to do so, I could and would competently testify thereto under
oath. This declaration is made in support of ex parte application for injunctive stay of

1 unlawful foreclosure, unlawful detainer /eviction dated May 16, 2008, of my home at 2440
2 Millstream Lane, San Ramon, California.

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4 2. I simultaneously have filed a complaint for statutory violations, misrepresentations,
5 and fraudulent conduct of defendants AVELO MORTGAGE, LLC, NORTHWEST
6 TRUSTEE SERVICES, CITIMORTGAGE. Contrary to Avelo's representations, they had no
7 standing to carry out a nonjudicial foreclosure sale. Avelo was noticed and additionally given
8 notarial presentment of plaintiff's letters requesting validation and verification of the alleged
9 debt by Qualified Written RESPA request, TILA Request, Notice of Settlement and various
10 other documents. Subsequent failures on the part of Avelo to properly respond to these
11 requests have been noted by service of Notices of Fault and opportunity to cure, followed by
12 Notices of Default and admission of tacit agreement to all statements, resulting in penalty of
13 \$20,000,000.00 and additional penalties for failure to pay, plaintiff's publication of Notice of
14 Interest and Claim Affidavit and Notice of Secured Interests, and Plaintiff's notarized
15 Declaration of Commercial Affidavit of the Truth, Rescission of Signatures and Revocation of
16 Adhesion Contracts for Cause, In addition defendant was provided with forms for Proof of
17 claim and proof of loss. There was no sale at the foreclosure only a transfer of title that does
18 not constitute a sale in commercial law.

19
20 The requested time period elapsed with non response from Avelo. The notary public Jeanne
21 Lovelace has confirmed Avelo's dishonor by non-performance. As a result by non-response
22 waiver all Plaintiff's allegations must be taken as truth.

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24 3. . In good faith on or about September 4, 2007 Plaintiff provided payment in
25 kind to AVELO c/o 250 E. John Carpenter Fwy, Ste 300, Irving, Texas 75062 and to
26 Citimortgage, c/o 1 Court Square, 42nd Floor, Long Island City, NY 11120 . In an abundance
27 of caution, on October 12, 2007 and again on November 4, 2007, additional tenders of
28 payment were sent to Avelo Mortgage, LLC to apply for pay off settlement of Avelo Home
29 Loan acct# 100323682. None of these full tenders were accredited to plaintiff's account and
30 Defendant failed to return receipt zeroing the account to the plaintiff. Since the claims of the
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32

1 plaintiff are deemed true in her affidavit, by defendant's non response, plaintiffs should
2 prevail on all their claims.
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5 4. Plaintiffs are left without a remedy and they are threatened with Sheriff Eviction.

6 5. This ex parte application is being faxed to Jackson & Associates, Attorneys in
7 charge of Sheriff Eviction process and their office is being advised that any opposition to this
8 ex parte request must be immediately filed with the Court.
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11 I declare under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct. Executed on 8th day of July, 2008 at San Ramon, California.
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15 JAN SCHIEBERL
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